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Practice of the Secretary-General in disciplinary matters and possible criminal behaviour, 1 July 2012 to 30 June 2013

Report of the Secretary-General

Summary

The present report is submitted in response to the request of the General Assembly in paragraph 16 of its resolution 59/287 that Member States be informed on an annual basis about all actions taken in cases of established misconduct and/or criminal behaviour and the disciplinary action and, where appropriate, legal action, taken in accordance with the established procedures and regulations. The report covers the period from 1 July 2012 to 30 June 2013.

The General Assembly is invited to take note of the report.

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I. Introduction

1. The present report is submitted in response to the request of the General Assembly in paragraph 16 of its resolution 59/287 that Member States be informed on an annual basis about all actions taken in cases of established misconduct and/or criminal behaviour in accordance with the established procedures and regulations. The report covers the period from 1 July 2012 to 30 June 2013.

2. As requested in paragraph 17 of resolution 59/287, an information circular will be issued so that all staff of the Organization will be informed of the most common examples of misconduct and/or criminal behaviour and their disciplinary consequences, including any legal action, with due regard to the protection of the privacy of the staff members concerned.

3. A broad overview of the administrative machinery in disciplinary matters is provided in section II below so that the information provided in sections III and IV can be understood in context. Section III contains a summary of the cases for which one or more disciplinary measures were imposed by the Secretary-General on Secretariat staff members during the reporting period. Section IV contains comparative data reflecting the disposition of cases that were completed during the reporting period, including cases that did not result in the imposition of a disciplinary measure, and information about appeals of disciplinary measures imposed since 1 July 2009. Section IV also provides comparative data on the number and nature of cases referred for action during the reporting period. Section V provides information on the practice of the Secretary-General in cases of possible criminal behaviour.

II. Overview of administrative machinery in disciplinary matters

A. Legislative framework governing the conduct of staff members[1]

4. Article 101, paragraph 3, of the Charter of the United Nations states that the "paramount consideration in the employment of the staff and in the determination of the conditions of service shall be the necessity of securing the highest standards of efficiency, competence and integrity".

5. Article I of the Staff Regulations and Chapter I of the Staff Rules, both entitled "Duties, obligations and privileges", set out the basic values expected of international civil servants because of their status, as well as particular manifestations of such basic values. Particular reference is made to staff regulation 1.2 and staff rule 1.2 for specific instances of expected and prohibited conduct.

B. Misconduct

6. Article X of the Staff Regulations provides in regulation 10.1 (a) that "the Secretary-General may impose disciplinary measures on staff members who engage in misconduct". Staff rule 10.1 (a) provides that the "failure by a staff member to comply with his or her obligations under the Charter of the United Nations, the Staff

[1] Provisions relating to the status, rights and duties of staff members, and to disciplinary matters, can be found in the electronic version of the Human Resources Handbook (available at www.un.org/hr_handbook) under the headings "Status, basic rights and duties" and "Disciplinary".

Regulations and Staff Rules or other relevant administrative issuances, or to observe the standards of conduct expected of an international civil servant, may amount to misconduct and may lead to the institution of a disciplinary process and the imposition of disciplinary measures for misconduct". Additionally, staff rule 10.1 (c) provides that "the decision to launch an investigation into allegations of misconduct, to institute a disciplinary process and to impose a disciplinary measure shall be within the discretionary authority of the Secretary-General or officials with delegated authority". Within these parameters, the Secretary-General has broad discretion in determining what constitutes misconduct and in imposing disciplinary measures. Administrative instruction ST/AI/371/Amend.1, on revised disciplinary measures and procedures,[2] provides further examples of conduct for which disciplinary measures may be imposed. A new administrative instruction on investigations and the disciplinary process is under preparation and is the subject of ongoing discussion and consultation among managers and other stakeholders. One of the main goals of the revisions is to codify certain matters relating to the investigatory process.

C. Due process

7. Where the head of office or responsible officer believes, following an investigation, that misconduct may have occurred, he or she refers the matter to the Assistant Secretary-General for Human Resources Management for a decision on whether to pursue the matter as a disciplinary case. Depending on the subject matter and complexity of the report of misconduct, the investigation can be undertaken by the head of office or his or her designees, or by the Office of Internal Oversight Services, at its own initiative or at the request of a head of office.

8. If the Assistant Secretary-General for Human Resources Management decides to pursue the matter as a disciplinary case, the staff member is notified in writing of the allegations of misconduct and is informed of his or her opportunity to comment on the allegations and of his or her right to seek the assistance of counsel in his or her defence through the Office of Staff Legal Assistance or from outside counsel at his or her own expense. The staff member is given a reasonable opportunity to respond to the allegations of misconduct. In the light of the comments provided by the staff member, the Assistant Secretary-General for Human Resources Management decides whether to close the case, with or without administrative action, or to recommend the imposition of one or more disciplinary measures. In the latter case, the Under-Secretary-General for Management decides, on behalf of the Secretary-General, whether to impose one or more of the disciplinary measures provided for in staff rule 10.2 (a).

9. Staff rule 10.4 (a) provides that, at any time pending an investigation until the completion of the disciplinary process, a staff member may be placed on administrative leave by the appropriate official.[3]

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[2] See also ST/SGB/2008/5, on the prohibition of discrimination, harassment, including sexual harassment, and abuse of authority.

[3] In January 2013, the Assistant Secretary-General for Human Resources Management delegated, on a pilot basis, her authority to the Under-Secretary-General for Field Support with regard to the placement on administrative leave with pay of staff members in field missions. Guidelines for placement of staff on administrative leave with pay pending investigation and the disciplinary process can be found in the Human Resources Handbook (www.un.org/hr_handbook).

10. In accordance with staff rule 10.3 (c), a staff member against whom a disciplinary measure has been imposed may submit an application to the Dispute Tribunal challenging the imposition of the measure(s) in accordance with chapter XI of the Staff Rules.[4]

D. Disciplinary measures

11. Staff rule 10.2 (a) provides that disciplinary measures may take one or more of the following forms (i.e., more than one measure may be imposed in each case):

(a) Written censure;

(b) Loss of one or more steps in grade;

(c) Deferment, for a specified period, of eligibility for salary increment;

(d) Suspension without pay for a specified period;

(e) Fine;

(f) Deferment, for a specified period, of eligibility for consideration for promotion;

(g) Demotion, with deferment, for a specified period, of eligibility for consideration for promotion;

(h) Separation from service, with notice or compensation in lieu of notice, and with or without termination indemnity;

(i) Dismissal.

12. In determining the appropriate measure, each case is decided on its own merits, taking into account the particulars of the case, including aggravating and mitigating circumstances. Each disciplinary case has its own unique facts and features and it is difficult, therefore, to determine what specific sanction should apply to a specific type of misconduct across the board.[5] In accordance with rule 10.3 (b), disciplinary measures imposed must be proportionate to the nature and gravity of the misconduct involved.

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[4] Judgements of the Dispute Tribunal relating to disciplinary cases can be found on the website of the Office of the Administration of Justice (www.un.org/en/oaj).

[5] The Dispute Tribunal has recognized the "fact-specific" nature of disciplinary cases and the difficulties in drawing general principles from past practice. See for example, *Yisma* (UNDT/2011/061), in which the Dispute Tribunal observed that "disciplinary cases tend to be very fact-specific" and that one "must exercise caution in extracting general principles concerning proportionality of disciplinary measures from the types of measures imposed in other cases, as each case has its own unique facts and features"; and *Atana* (UNDT/2013/068): "Finally, there may be instances where a comparison may be made between the disciplinary measure imposed on the staff member and other similar circumstances with alleged different disciplinary measures. It has been noted that in these instances, although it may assist in the assessment in the proportionality of the measure imposed, generally, the circumstances of each case differ so greatly that comparisons may be difficult to make."

E. Other measures

13. Written or oral reprimands, recovery of moneys owed to the Organization and administrative leave with or without pay are not considered disciplinary measures. Reprimands, like warnings or letters of caution, are administrative/managerial measures that are important for upholding standards of proper conduct and promoting accountability. Additionally, where inappropriate behaviour affects performance, the issue may also be addressed in the context of performance management. This may include training, counselling, withholding of salary increments, non-renewal of contract or termination of appointment.

III. Summary of cases for which the Secretary-General imposed disciplinary measures during the period from 1 July 2012 to 30 June 2013

14. For each case that led to the imposition of one or more disciplinary measures, a summary is provided below indicating the nature of the misconduct and the disciplinary measure(s) imposed by the Secretary-General. The function of or other particulars relating to the staff member are provided only when they played a role as aggravating or mitigating circumstances in determining the measures to be taken. Conduct issues that were dealt with by means other than disciplinary measures are not listed.

15. Both aggravating and mitigating factors are taken into account in determining a sanction, and these will vary according to the unique facts and circumstances of a case. Examples of possible aggravating factors are repetition of acts of misconduct, the intent to derive personal benefit and the degree of harm resulting from the acts of misconduct. Examples of possible mitigating factors are sincere remorse, a staff member's personal circumstances and voluntary disclosure of the acts of misconduct. This approach has been confirmed by the Dispute Tribunal.[6]

16. Not every case brought to the attention of the Secretary-General results in disciplinary or other measures being taken. When a review by the Office of Human Resources Management reveals that there is insufficient evidence to pursue a matter as a disciplinary case, or when a staff member provides a satisfactory explanation in response to the formal allegations of misconduct, the case is closed. Cases may also be closed when a staff member retires or otherwise separates from the Organization before an investigation or the disciplinary process is concluded, as the Secretary-General does not have the authority to impose disciplinary measures on former staff members. In such cases, a record is made and placed in the former staff member's official status file so that the matter can be further considered if and when the staff member rejoins the Organization.

Harassment, including sexual harassment

17. A staff member, who was the most senior staff member of the regional office where the staff member was posted, harassed other staff by repeatedly shouting at them and by repeatedly accusing them of dishonesty and incompetence. *Disposition*:

[6] See, for example, the Dispute Tribunal's judgements in *Yisma* (UNDT/2011/061) and *Diakite* (UNDT/2010/024).

Demotion, with deferment for one year of eligibility for consideration for promotion. *Appeal*: Filed with the Dispute Tribunal, where the case remains under consideration.

18. A staff member with managerial responsibilities engaged in workplace harassment and abuse of authority by shouting at staff members, tasking them with running personal errands for him and engaging in intimidating behaviour. There were several mitigating circumstances in the case, including the staff member's long service and consistently high performance appraisals, the fact that the staff member took steps to correct his behaviour by, inter alia, seeking the care of a therapist and participating in mediation with the aggrieved staff members, and the fact that the staff member had, at the time of the misconduct, undergone various personal stresses. *Disposition*: Censure and a loss of five steps in grade. *Appeal*: None.

19. A staff member, while serving as officer-in-charge of a unit, performed an act that was intimidating in nature. *Disposition*: Censure. *Appeal*: None.

20. A staff member with managerial responsibilities shouted and used harsh and foul language towards other staff members over an extended period of time. The staff member's behaviour was found to belittle, demean and humiliate other staff members and create an intimidating work environment. The difficult and stressful nature of the functions required of the staff member, and the lack of oversight support and corrective action by management were taken into account as mitigating factors. *Disposition*: Demotion, with deferment for two years of eligibility for consideration for promotion. *Appeal*: None.

21. A staff member sent unwanted e-mails to another staff member, including some containing insulting and humiliating comments. The number of e-mails was relatively limited. The time taken from the initiation of the investigation to imposition of the sanction also acted as a mitigating factor. *Disposition*: Censure. *Appeal*: The time for appeal of the disciplinary measure had not expired as of the submission of the present report.

Theft and misappropriation

22. A staff member attempted to misappropriate fuel belonging to the Organization and, when caught during this attempt, fled the scene with a vehicle belonging to the Organization. The vehicle was damaged prior to being abandoned by the staff member and was eventually recovered by the Organization. *Disposition*: Dismissal. *Appeal*: None.

23. A staff member took a laptop belonging to another staff member, without authorization, and arranged to have another person sell it to a third party. The staff member expressed remorse and returned the laptop. *Disposition*: Separation from service, with compensation in lieu of notice and with termination indemnity. *Appeal*: None.

24. A staff member took a laptop belonging to the Organization, without authorization, and sold it. *Disposition*: Dismissal. *Appeal*: None.

25. A staff member serving as a security clerk took and sold fuel belonging to the Organization, without authorization. The staff member explained that the action was taken because the staff member was facing considerable financial obligations. The staff member's immediate admission of misconduct, full cooperation with the investigation, personal circumstances and the time taken to refer the matter for

possible disciplinary action were taken into account as mitigating factors. *Disposition*: Separation from service, with compensation in lieu of notice and with termination indemnity. *Appeal*: None.

26. A staff member attempted to steal fuel belonging to the Organization. The staff member's remorse, cooperation with the investigation, personal circumstances and the time taken prior to referral for possible disciplinary action were taken into account as mitigating factors. Aggravating factors were that the staff member committed the misconduct shortly after joining the Organization and took advantage of the position with the Organization to commit the misconduct. *Disposition*: Separation from service, with compensation in lieu of notice and with termination indemnity. *Appeal*: None.

27. A staff member took property of another staff member from the Organization's premises without authorization. The staff member's record of service with the Organization and personal circumstances were taken into account as mitigating factors. *Disposition*: Separation from service, with compensation in lieu of notice and with termination indemnity. *Appeal*: Filed before the Dispute Tribunal. The Tribunal upheld the disciplinary measure of separation. The staff member has appealed to the Appeals Tribunal, where the case is currently under consideration.

28. A staff member stole a duty-free fuel card from a United Nations office, used it to refuel the staff member's private vehicle and attempted to use the card again. Long and valued service and no prior disciplinary record acted as mitigating factors. However, the staff member sought to incriminate others, which acted as an aggravating factor. *Disposition*: Separation from service, with compensation in lieu of notice and without termination indemnity. *Appeal*: Filed with the Dispute Tribunal, where the case remains under consideration.

29. A staff member misused a fuel card that belonged to the Organization by converting portions of the balance on the card to cash (instead of using the card to purchase fuel) and then taking the cash. *Disposition*: Separation from service, with compensation in lieu of notice and without termination indemnity. The staff member also reimbursed to the Organization the amount of cash taken. *Appeal*: None.

30. A staff member entrusted with dispensing fuel pumped 785 litres of fuel belonging to the Organization from a United Nations fuel truck and sold it to a third party. The time taken to complete the investigative process was taken into account as a mitigating factor. *Disposition*: Separation from service, with compensation in lieu of notice and with termination indemnity. *Appeal*: None.

31. A staff member took, without authorization, removed metal sheets belonging to the Organization from the premises and sold them to a third party. There was no evidence that the staff member had intended to steal the property, as objective evidence supported his contention that he believed that the metal sheets had been abandoned by the Organization. The staff member's personal circumstances, his early admission of the conduct and full cooperation with the investigation, and his long and satisfactory service with the Organization, attested to by his colleagues and supervisors, who praised his integrity and honesty in letters of support, were taken into account in determining the sanction to be imposed. *Disposition*: Censure and a loss of two steps in grade. *Appeal*: The time for appeal of the disciplinary measures had not expired as of the submission of the present report.

32. A staff member stole money from his supervisor in the workplace on three occasions. *Disposition*: Dismissal. *Appeal*: The time for appeal of the disciplinary measure had not expired as of the submission of the present report.

Fraud, misrepresentation and false certification

33. Three staff members knowingly submitted false information in their requests for salary advances and submitted falsified death certificates in support of their requests. The time taken to refer the matter for possible disciplinary action was taken into account as a mitigating factor. *Disposition*: Separations from service, with compensation in lieu of notice, and with termination indemnity. *Appeals*: None.

34. A staff member submitted a claim for dependency benefits for a child who was not the natural or legally adopted child of the staff member and falsely reaffirmed parenthood of the child in response to a follow-up enquiry. The staff member had cared for the child since shortly after the child's birth and completed the legal adoption of the child after the initiation of disciplinary proceedings. *Disposition*: Demotion, with deferment for three years of eligibility for consideration for promotion. *Appeal*: None.

35. A staff member falsified travel quotations from vendors and knowingly submitted those falsified quotations along with their associated travel authorization forms for approval, causing the Organization to incur financial loss. The staff member also accepted free travel from another vendor. The time taken from initiation of the investigation to completion of the disciplinary process was taken into account as a mitigating factor. *Disposition*: Separation from service, with compensation in lieu of notice, and with termination indemnity. *Appeal*: Filed with the Dispute Tribunal, where the case remains under consideration.

36. A staff member failed to honour his private legal obligations by entering into numerous car rental agreements with respect to vehicles that were never returned to the rental agencies or paid for. The staff member's personal circumstances were taken into account as a mitigating factor. *Disposition*: Separation from service, with compensation in lieu of notice, and without termination indemnity. *Appeal*: None.

37. A staff member, while performing the functions of a cashier, failed to deposit into the Organization's bank account moneys that were returned to the staff member by different programme managers on numerous occasions. The staff member concealed the staff member's actions by posting false entries in the Organization's software system. The time taken to conclude the investigation and subsequent disciplinary process and the restitution of losses were taken into account as mitigating factors. *Disposition*: Separation from service, with compensation in lieu of notice, and without termination indemnity. *Appeal*: None.

38. A staff member serving in the movement control section sold movement of personnel forms to individuals not affiliated with the Organization. *Disposition*: Dismissal. *Appeal*: None.

39. A staff member failed to properly account for all moneys received while performing the staff member's functions as a booking clerk. The time taken from the initiation of the investigation to completion of the disciplinary process, which may have compromised the ability of the staff member to provide extenuating information about the allegations, as well as the staff member's junior level, were

taken into account as mitigating factors. *Disposition*: Censure and demotion, with deferment for two years of eligibility for consideration for promotion. *Appeal*: None.

40. A staff member serving as finance assistant made unauthorized entries in the Organization's payroll system software in order to prevent the automatic recovery of overpayments of the staff member's salary, thereby providing the staff member with a de facto interest-free loan. The staff member's position and responsibilities in the finance area were considered as aggravating factors. The restitution of losses, the staff member's conduct during the investigation, the staff member's remorse and prior unblemished service record were taken into account as mitigating factors. *Disposition*: Separation from service, with compensation in lieu of notice and with termination indemnity. *Appeal*: Filed with the Dispute Tribunal, where the case remains under consideration.

41. A staff member submitted a claim for dependency benefits for children who were not the natural or legally adopted children of the staff member. Although the staff member had previously been informed that the staff member was not entitled to such benefits, the staff member nevertheless submitted a second claim using false supporting documents. The time taken from the initiation of the investigation to completion of the disciplinary process was taken into account as a mitigating factor. *Disposition*: Separation from service, with compensation in lieu of notice and with termination indemnity. *Appeal*: None.

42. A staff member used documents that were purported to have been issued by the Government of a Member State, and which falsely stated that the staff member was a representative of the Member State, in support of an application to attend a training course. The staff member promptly admitted his actions and cooperated with the investigation and disciplinary process. *Disposition*: Separation from service, with compensation in lieu of notice and without termination indemnity. *Appeal*: The time for appeal of the disciplinary measure had not expired as of the submission of the present report.

Misuse of or failure to exercise reasonable care in relation to United Nations property or assets

43. A staff member was involved in an automobile accident while driving a United Nations vehicle on unauthorized personal travel, in excess of the speed limit mandated by the mission and transporting two unauthorized passengers not affiliated with the Organization. The time taken from initiation of the investigation to completion of the disciplinary process was taken into account as a mitigating factor. *Disposition*: Demotion, with deferment for three years of eligibility for consideration for promotion. *Appeal*: None.

44. A staff member attempted to steal a number of items belonging to the Organization from a United Nations compound while driving a vehicle without authorization. *Disposition*: Dismissal. *Appeal*: The time for appeal of the disciplinary measure had not expired as of the submission of the present report.

Misuse of information and communications technology resources

45. A staff member used a United Nations laptop to view pornographic materials. A pornographic video clip and "thumbnails" indicating the former presence of pornographic images were recovered from the laptop through forensic investigation.

Furthermore, the Internet browsing history indicated that the staff member had accessed a website containing pornographic materials. The staff member admitted the conduct. *Disposition*: Censure. *Appeal*: None.

Sexual exploitation and abuse

46. A staff member engaged in sexual intercourse with a child and violated the national laws of a Member State. *Disposition*: Dismissal. *Appeal*: None.

Procurement irregularities

47. A staff member failed to report to his supervisors that a representative of a company interested in bidding for a contract with the United Nations had offered the staff member a sum of money in the context of a procurement process. The staff member had not accepted the money offered. *Disposition*: Censure. *Appeal*: None.

48. A staff member misused a United Nations-issued mobile telephone and landline for private calls over the course of a year and a half and deliberately failed to declare these private calls. The staff member reimbursed the full cost of the calls during the investigation. *Disposition*: Censure and loss of one step in grade. *Appeal*: The time for appeal of the disciplinary measures had not expired as of the submission of the present report.

Gross negligence

49. In the context of the attempted misappropriation of fuel by another staff member, a staff member who worked as a fuel pump attendant recklessly failed to follow proper procedures in relation to dispensing fuel. The staff member had previously been reprimanded for failing to exercise due diligence in the offloading of a delivery of fuel to the Organization. *Disposition*: Dismissal. *Appeal*: None.

50. In the context of the attempted misappropriation of fuel by another staff member, a staff member who worked as a vehicle dispatcher recklessly failed to follow proper procedures in relation to issuing vehicles. The staff member had been previously reprimanded for improperly issuing a United Nations vehicle to a staff member for personal use. *Disposition*: Separation from service, with compensation in lieu of notice and without termination indemnity. *Appeal*: None.

Assault

51. In the context of a verbal argument, during which he was cursed at, a staff member violently pushed another staff member, causing him to fall to the ground. Furthermore, at a town hall meeting, the staff member encouraged other staff members to resort to violence to resolve disputes with other staff members. *Disposition*: Separation from service, with compensation in lieu of notice and without termination indemnity. *Appeal*: The time for appeal of the disciplinary measure had not expired as of the submission of the present report.

Inappropriate or disruptive behaviour

52. A staff member behaved aggressively and shouted death threats at a staff member in the presence of other staff members and military personnel and, later the same day, continued to behave aggressively and to shout death threats at another staff member in the presence of other staff. The incidents took place on a single day

and did not involve a physical assault. The staff member's conduct entailed frightening death threats in a mission environment. *Disposition*: Separation from service, with compensation in lieu of notice and without termination indemnity. *Appeal*: The time for appeal of the disciplinary measure had not expired as of the submission of the present report.

53. A staff member was involved in a plot to scare a staff member of another organization belonging to the United Nations common system. In furtherance of this plot, the staff member contracted, and paid a sum of money to, third parties to carry out the plot. *Disposition*: Dismissal. *Appeal*: The time for appeal of the disciplinary measure had not expired as of the submission of the present report.

Other

54. Three staff members failed to comply with mission security requirements by travelling to a restricted area without validly approved movement of personnel forms and, after they were involved in collision with a United Nations vehicle, initially misled the investigators in a material aspect. The staff members subsequently voluntarily corrected their account of events to investigators, and there was no evidence that they were at fault in the collision. *Disposition*: Censures. *Appeals*: None.

55. A staff member was involved in an automobile accident while driving a personally owned vehicle after working hours. The staff member failed to notify either the relevant authorities at the mission, as required by the mission's procedures, or the national authorities. *Disposition*: Censure and deferment, for a period of one year, of eligibility for salary increment. *Appeal*: None.

IV. Data on cases received and completed during the reporting period

A. Cases completed during the reporting period

56. The tables in the present section provide information on the number and disposition of cases completed during the reporting period, including those that did not result in the imposition of a disciplinary measure. Information is also provided about appeals to the Dispute Tribunal of disciplinary measures imposed during the current and the three previous reporting periods.

57. The length of time for completion of the disciplinary process varies depending on the complexity of the matter and the volume of evidence. During the reporting period, a number of factors have continued to affect the processing of disciplinary cases, including the jurisprudence from the Dispute Tribunal and the Appeals Tribunal. In particular, the decision of the Appeals Tribunal in *Molari* (2011-UNAT-164), which provided that the standard of proof in disciplinary cases that could result in a termination is "clear and convincing evidence",[7] has often resulted in the need for the Office of Human Resources Management to request further input from investigating entities after the initial referral of the matter. This has added to the

[7] A recent Dispute Tribunal judgement, *Applicant* (UNDT/2013/086), also applied the "clear and convincing" standard of proof to its analysis of the evidence in a challenge to a sanction of demotion.

length of time required to process a case, as the Administrative Law Section of the Office of Human Resources Management is required to perform increasingly detailed analyses and to scrutinize every aspect of each case. The time taken to process a case also includes the time needed for the staff member concerned to respond to the allegations, which can be lengthy as the staff member may request extensions or need to consult counsel, who may be located far away. After responses are received from staff members, it is often necessary to seek further clarifications and evidence, and to then again obtain the staff member's comments on the additional information received.

58. It should be noted that the tables reflect cases completed during the reporting period that were referred to the Office of Human Resources Management both prior to and during the reporting period. The average time taken during the reporting period to dispose of cases after their referral to the Office was 6.6 months.

Table 1
Disposition of cases completed between 1 July 2012 and 30 June 2013

Disposition	*Number of cases*
Dismissal	8
Separation from service, with compensation in lieu of notice and with or without termination indemnity	19
Other disciplinary measures	16
Administrative measures	6
Closed with no measure (after staff member has received formal allegations of misconduct)	4
Not pursued as a disciplinary matter (staff member does not receive written allegations of misconduct)	32
Separation of the staff member after referral of the case to the Office of Human Resources Management prior to the completion of a disciplinary process (e.g., retirement, end of contract, resignation)	27
Other	3
Total	**115**

59. During the previous reporting period, 1 July 2011-30 June 2012, 39 out of 155 cases, or 25 per cent of the total, were not pursued as disciplinary matters. During the period covered by the present report, 32 out of 115 cases, or 27 per cent of the total, were not pursued as disciplinary matters. In the two prior reporting periods, ending 30 June 2010 and 2011, the corresponding percentages were 4 per cent and 14 per cent. The reason for a given case not being pursued as a disciplinary matter is specific to the facts and circumstances of the case. However, as noted above, one important factor in the general increase in the percentage of cases not being pursued is the decision of the Appeals Tribunal in *Molari* (2011-UNAT-164), announced in October 2011, which provided that facts supporting a disciplinary measure that could result in termination must be established by clear and convincing evidence. This high evidentiary standard affected the number of cases that were pursued as disciplinary matters. Another relevant factor is that, in certain cases, the conduct at issue, while falling below the standards of conduct that may be expected of an international civil servant, may not rise to the level of possible misconduct, and may

therefore be more appropriately addressed through administrative rather than disciplinary measures.

Table 2
Number of cases completed in the past six reporting periods

Period	*Number of cases*
1 July 2012 to 30 June 2013	115
1 July 2011 to 30 June 2012	155
1 July 2010 to 30 June 2011	271
1 July 2009 to 30 June 2010	100
1 July 2008 to 30 June 2009	301
1 July 2007 to 30 June 2008	90

60. The backlog of cases that resulted from the significant increase in the number of cases received during the period 1 July 2008-31 December 2009 was cleared by December 2012. The number of cases completed during the period covered by the present report is in line with the number of cases completed in the 2007/08 reporting period (before the increase in cases referred to the Office of Human Resources Management), namely, 90 cases closed during the period ending 30 June 2008.

61. Once a completed case has resulted in the imposition of a disciplinary measure, the staff member may challenge that decision before the Dispute Tribunal. With regard to the number of appeals of disciplinary measures imposed since 1 July 2009, it is noted that a relatively small percentage of disciplinary measures have been challenged.[8] In each of the reporting periods since 1 July 2009, the percentage of disciplinary measures that have been subject to appeal is 24 per cent, 16 per cent, 16 per cent and 11 per cent,[9] respectively.

Table 3
Number of appeals contesting disciplinary measures imposed between 1 July 2009 and 30 June 2013

Period	*Number of appeals*
1 July 2012 to 30 June 2013	5
1 July 2011 to 30 June 2012	7
1 July 2010 to 30 June 2011	16
1 July 2009 to 30 June 2010	7

[8] During the past four years, the Dispute and Appeals Tribunals have, in addition, been considering the appeals of disciplinary measures imposed prior to 1 July 2009 under the previous system of justice. These tables in the present section do not contain information about the number of those appeals or their outcomes.

[9] During the period 1 July 2012 to 30 June 2013, of the 35 cases where a disciplinary measure had been imposed and the time for appeal had expired, staff members in five of the cases appealed the sanction. It is noted, however, that disciplinary measures were imposed in eight cases where the time to appeal had not expired as of the submission of the present report. If the trend for challenging imposed disciplinary measures continues with respect to those eight cases, the relevant percentage will be 16 per cent.

62. The number of Dispute Tribunal and Appeals Tribunal judgements on disciplinary sanctions in the Secretariat imposed after 1 July 2009 is too small to draw reasonable conclusions about trends in the outcomes of appeals. Of a total of 35 applications from Secretariat staff members to the Dispute Tribunal, almost half (15 cases) remain pending before the Tribunal and 4 were settled or withdrawn. Of the cases decided by the Dispute Tribunal (16 cases in total), the Secretary-General prevailed in 13 cases, or 81 per cent. The staff member has prevailed before the Dispute Tribunal in only three cases, and with regard to one of those cases, the Appeals Tribunal overturned the Dispute Tribunal's judgement and upheld the sanction. In the other two cases, appeals by the Secretary-General are pending before the Appeals Tribunal.

Table 4
Disposition of the appeals contesting disciplinary measures imposed between 1 July 2009 and 30 June 2013

Disposition	*Number of cases*	*Percentage*
Respondent prevailed at Dispute Tribunal, no appeal by staff member to Appeals Tribunal	3	8.5
Staff member appeal before Dispute Tribunal withdrawn	3	8.5
Settled	1	2.9
Respondent prevailed at Dispute Tribunal and Appeals Tribunal	1	2.9
Respondent prevailed at Dispute Tribunal, staff member appealed to Appeals Tribunal (pending)	4	11.4
Respondent prevailed at Dispute Tribunal, period for staff member to appeal to Appeals Tribunal has not expired	5	14.3
Staff member prevailed at Dispute Tribunal, respondent prevailed at Appeals Tribunal	1	2.9
Staff member prevailed at Dispute Tribunal, respondent appealed to Appeals Tribunal (pending)	2	5.7
Staff member's appeal pending at Dispute Tribunal	15	42.9
Total	**35**	**100.0**

B. Cases received by the Office of Human Resources Management

63. The tables in this section provide information on the number and types of cases that were referred to the Office of Human Resources Management for possible disciplinary action during the period covered by the present report (1 July 2012-30 June 2013), as well as the number of cases received over the previous four reporting periods.

Table 5
Number of cases received by the Office of Human Resources Management

Period	*Number of cases*
1 July 2012 to 30 June 2013	131
1 July 2011 to 30 June 2012	95
1 July 2010 to 30 June 2011	123
1 July 2009 to 30 June 2010	167
1 July 2008 to 30 June 2009	440

Table 6
Types of cases received by the Office of Human Resources Management between 1 July 2012 and 30 June 2013

Type	*Number*	*Percentage*
Cases relating to staff based at United Nations Headquarters and offices away from Headquarters	37	28
Cases relating to field staff	94	72
Total	**131**	**100**

64. The period covered by the present report has seen an increase in the proportion of cases concerning field staff, namely 72 per cent. In the three previous reporting periods the corresponding percentages were 60 per cent, 51 per cent and 63 per cent.

Table 7
Cases received by type of misconduct

Type	*Number*
Abuse of authority/harassment/discrimination	8
Assault (verbal and physical)	12
Fraud, misrepresentation and false certification	20
Inappropriate or disruptive behaviour	2
Misuse of information and communications technology resources and computer-related misconduct	7
Misuse of United Nations property	7
Failure to honour private legal obligations	2
Procurement irregularities	1
Sexual exploitation and abuse	6
Theft and misappropriation	35
Unauthorized outside activities and conflict of interest	15
Others	16
Total	**131**

V. Possible criminal behaviour

65. In its resolution 59/287, the General Assembly requested the Secretary-General to take action expeditiously in cases of proven misconduct and/or criminal behaviour and to inform Member States about the actions taken. During the reporting period, four cases involving credible allegations of criminal conduct by United Nations officials or experts on mission were referred to Member States. The Secretary-General is not aware of any action taken in respect of such cases by the Member States concerned.

VI. Conclusion

66. **The Secretary-General submits the present report to the General Assembly and invites it to take note of the report.**